

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

**Roland SUCK et al.**

Examiner: ROONEY, Nora M.

Serial No.: 10/525,000

Group Art Unit: **1644**

Filed: FEBRUARY 17, 2005

Confirmation No.: 2809

Title: **VARIANTS OF THE MAJOR ALLERGEN PHL P 1 FROM TIMOTHY GRASS**

**RESPONSE TO RESTRICTION REQUIREMENT**

MAIL STOP AMENDMENT  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Restriction Requirement dated June 20, 2007, Applicants hereby elect, with traverse, Group I (claims 1-6, 12–15, and 17), drawn to Phl p 1 allergen variant and pharmaceutical composition(s) thereof.

In response to the election of species requirement, Applicants hereby elect, with traverse, a polypeptide having the sequence set forth in SEQ ID NO: 2.

Withdrawal of this restriction requirement is respectfully requested. At page 3 of the outstanding Office Action, the Examiner referred to Cosgrove (US 7,001,743) as the basis for her conclusion that the claims do not relate to single general inventive concept. However, in view of the disclosure contained in Applicants' instant specification with respect to variant species, it is kindly submitted that Cosgrove is not drawn to the instantly claimed Phl p 1 variant. See, see the disclosure contained in the paragraphs bridging page 7, line 26 to page 8 line 16 of the instant specification and Applicants' original claim 1. The admission that SEQ ID NO: 20 of Cosgrove exhibits "40.7 % sequence identity over amino acids 14–239 of SEQ ID NO: 2" and further contains "61 mismatches and 21 inserted amino acids" further corroborates this distinction. As such, the Restriction Requirement is improper and should be duly withdrawn.

Moreover, it is earnestly submitted that the entirety of the present claims possess unity of invention under 37 C.F.R. §1.499. The claims in the instant application involve related subject matter, for example, a grass pollen allergen, as recited in Applicants' elected Group I. All the claims would comprise overlapping subject matter and it would not be an undue burden on the Examiner to carry out a search. "If search and examination of an entire application can be made

without serious burden, the Examiner *must* examine it on the merits, even though it includes claims to independent or distinct invention.” (Emphasis added.) See, M.P.E.P. §803. Accordingly, it is respectfully submitted that the restriction be withdrawn.

Applicants respectfully submit that at a minimum, the restriction requirement should be modified to combine Group IV (claim 18), drawn to a method of using the claimed compounds for the diagnosis of allergies. “If a product claim is found allowable, process claims that depend from or otherwise require all the limitations of the patentable product may be rejoined.” See M.P.E.P. § 806.05. Therefore, a modification to the existing restriction requirement is respectfully requested.

For all of the above reasons, it is urged that the restriction requirement should be withdrawn. Favorable action is earnestly solicited.

Should the Restriction Requirement still be maintained, Applicants will seek reentry of any withdrawn claims once allowable subject matter has been determined. See, for example, M.P.E.P. §821.04, “Rejoinder.”

No fees are believed to be due with this response; however, the Commissioner is hereby authorized to charge any fees associated with this response to Deposit Account No. 13-3402.

Respectfully submitted,

/Anthony J. Zelano/  
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